

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.34427 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

‘to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in not releasing the bills payable to the Petitioner through 4th Respondent for dumping and loading of sand from Godavari river at Chenchupalle IV), Mangapeta (M), Warangal District, pursuant to the agreement date 04.03.2016, which was executed by the Petitioner as illegal, null, void and arbitrary and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case ...’

2. I have heard the submissions of Sri K. Durga Prasad, learned counsel representing Sri K. Tharun Chowdary, learned counsel for the petitioner; of the learned Government Pleader for Mines & Industries representing the 1st respondent; of the learned Government Pleader for Social Welfare representing the 2nd respondent, of Sri V. Prathap Reddy, learned standing counsel representing the 3rd respondent. I have perused the material record.

3. The case of the writ petitioner and the submissions made on his behalf, in brief, are as follows: - “The 2nd and 3rd respondent authorities allotted the work of dumping and loading of sand from Godavari River to the 4th respondent under an agreement, dated 04.03.2016. Under the said agreement, the extent of land was 24.15 hectares and the quantity of the sand was 179452.80 Cubic Metres (CBM). For every cubic metre, the Telangana State Mineral Development Corporation/3rd respondent agreed to pay Rs.220/-.

While so, as the work involved huge quantity of money as well as work, the 4th respondent society, as per its resolution, entered into an agreement with the petitioner. The 4th respondent society agreed to pay Rs.180/- per cubic metre to the petitioner. Accordingly, the petitioner did the work and delivered quantity of 146350.50 cubic metres during the period from 01.02.2016 to 15.05.2017. The petitioner spent huge money on machinery and labour in doing the said work. The 3rd respondent authority sold the sand and collected Crores of rupees on the work done by the petitioner. The 3rd respondent authority partly paid Rs.70,00,000/- to the 2nd respondent authority's account for distribution of the same to the 4th respondent society. As per the agreement entered into between the petitioner and the 4th respondent, the 4th respondent society in turn has to pay to the petitioner @ Rs.180/- per cubic metre for the above said work done by the petitioner. The amount is lying with the 2nd respondent and for the reasons best known, the 2nd respondent authority is not distributing the amount to either the 4th respondent or the petitioner, inspite of several requests made by the petitioner and the 4th respondent. The said act of the 2nd respondent is illegal and arbitrary. Hence, the writ petition is filed.'

4. At the hearing, learned counsel for the petitioner would submit that after the writ petition was filed, the petitioner learnt that the amount due and payable was neither paid to the petitioner nor the 4th respondent and that the amount was paid to some third party illegally though the work was entrusted by the 4th respondent to the petitioner, under an agreement, and that the petitioner, for the work done by him, is entitled to receive Rs.180/- per cubic metre, as stated in the writ petition.

5. Though no counter has been filed the learned Government Pleader, on written instructions, would submit that the 4th respondent society entered into an agreement with M/s.Sai Tirumala Infra Project, Brahmanapalli, Wyra Mandal of Khammam District (erstwhile), on 03.02.2016, at Government terms and conditions to extract the sand from Godavari River location and transport by tractors to stack yard where the same has to be uploaded to lorries specified by the TSMDC and receive Rs.180/- per cubic metre duly deducting 2% towards TDS; The said M/s. Sai Tirumala Infra Project, during March, 2016, to June, 2016, despatched sand to a tune of 75707 cubic metres; Hence, as per the said agreement (75707 x Rs.180/-) Rs.1,36,37,360/- was payable out of which Rs.2,72,545/- was deductible towards TDS; The remaining amount payable was Rs.1,33,64,714/-; A request was made for payment of the same; The President and Executive Committee of the 4th respondent Society after discussions passed a resolution for making payment of the above said amount and the concerned authority after verification recommended for payment and accordingly the said amount was released through cheque no.210324, dated 17.10.2017, under joint signature of the President of the 4th respondent society and Project Officer, ITDA, Eturunagaram, and hence, the writ petition is liable for dismissal. Learned GP would further submit that the agreement, if any, between the 4th respondent and the petitioner is invalid as the agreement with the raising contractor (society) that is the agreement with the 4th respondent entered into by the Project Officer, Branch Office, Warangal/2nd respondent, on behalf of M/s.TSMDC Ltd./3rd respondent is not transferable and that the petitioner has no *locus standi* to make any claim for payment for any alleged work done or to question the payment made by the 2nd and 3rd respondent authorities, in the facts and circumstances stated.

6. I have given earnest consideration to the facts and submissions.

7. From the facts, submissions and documents placed before the Court, the following facts are discernable: 'The Project Officer/2nd respondent on behalf of the 3rd respondent/TSMDC entered into an agreement with Raising Contractor (Society)/4th respondent Society for extraction of sand from specified sand bearing area. As per the said agreement, the 4th respondent Society is the raising contractor for extraction of sand from specified sand bearing area; the said contract is subject to terms and conditions mentioned therein. As per the said terms and conditions, the 4th respondent Society/allottee shall extract sand from the specified sand bearing area and transport the extracted sand to the specified stack yard manually through tractors having capacity of not more than three cubic metres; the rate for manual excavation of sand at specified sand bearing area and transportation through tractors up to specified stack yard mentioned by TSMDC and again reloading of sand by machinery into the lorries is @ Rs.220/- per cubic metre. As per the terms and conditions of the said agreement, dated 04.03.2016, between the 2nd respondent and the 4th respondent, the agreement is not transferable. Therefore, the agreement, dated 05.03.2016, between the 4th respondent and the petitioner is invalid and not binding on the respondents 2 and 3. The arrangement, if any, between the 4th respondent and the petitioner under the said agreement is in violation of the condition mentioned in the agreement, dated 04.03.2016, that the agreement is not transferable. As such, the agreement between the petitioner and the 4th respondent, if any, cannot be enforced by means of the present writ petition. Hence, since the agreement between the petitioner and the 4th respondent on which the petitioner places

reliance is unenforceable in view of the violation of the condition mentioned in the agreement between the 4th respondent and the 2nd respondent, the petitioner is not entitled to make any claim for the alleged work done by him under such invalid agreement between the petitioner and the 4th respondent.

8. However, as rightly urged by the learned counsel for the petitioner, the payment was not made to the 4th respondent for the work done but was made to M/s.Sai Tirumala Infra Project, a third party to the agreement with raising contractor society. Be that as it may, if any party is to be aggrieved by such payment to M/s.Sai Tirumala Infra Project, it is the 4th respondent. The 4th respondent is not questioning the said payment as the said payment was made to M/s. Sai Tirumala Infra Project as per the decision and resolution of the 4th respondent society and under the joint signatures of the President of the 4th respondent Society and the Project Officer, ITDA, Eturunagaram. In the light of the said facts, the petitioner has *no locus standi* to substantiate the present claim by questioning the said payment. If the petitioner has really done any work as per the agreement, if any, between the petitioner and the 4th respondent, and any amount is due to the petitioner in that regard, the petitioner has to proceed against the 4th respondent. In that view of the matter, the claim made in the writ petition needs no countenance and the writ petition is liable for dismissal being devoid of merit.

9. In the result, the Writ Petition is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

06.12.2017

Vjl